IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 303 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? NO

2 To be referred to the Reporter or not ? NO

3 Whether their Lordships wish to see the fair copy of the judgment ? NO

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? NO

5 Whether it is to be circulated to the civil judge ? NO

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SATISHBHAI BHIMSHIBHAI JOTVA - Applicant(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MR PM THAKKAR, SR.COUNSEL WITH MR DM THAKKAR for Applicant(s) : 1,
MR KC SHAH, APP for Respondent(s) : 1,

MR ND NANAVATI, SR.COUNSEL WITH MR HRIDAY BUCH for Respondent(s) :2-3.

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 26/06/2007

ORAL JUDGMENT

1. Rule. Mr.K.C.Shah, learned APP appears and waives service of Rule on behalf of respondent NO.1-State of Gujarat and Mr.Hriday Buch, learned advocate appears and waives service of Rule on behalf of respondent No.2. With the consent of parties, the matter has been taken up for final disposal.

1.1 Satishbhai Bhimshibhai Jotva, petitioner-original complainant has filed this revision application under Section 397 read with Section 401 of the Code of Criminal Procedure against the judgment and order dated 4.6.2007 passed in Misc. Criminal Application No.170 of 2007 by the learned Sessions Judge, Junagadh thereby allowing application of transfer of Sessions Case No.85 of 2003 and Sessions Case No.53 of 2004 pending before the learned 2nd Fast Track Court Judge, Junagadh to learned Sessions Judge, Junagadh (himself).

2. I have heard Mr.P.M.Thakkar, learned Senior Counsel for the petitioner. He has stated that in this case somewhere on 2.9.2003 the incident of

double murder happened at 10.30 a.m. at Village Arena, Taluka Mangrol, District Junagadh. The offence was registered under Sections 302, 307, 326, 143, 147, 148, 149 and 506(2) of Indian Penal Code and Sections 25(1)(A) and Sec.27 of the Arms Act and 135 of the Bombay Police Act. The offence was registered as C.R.No.I 70 of 2003 with Mangrol Police Station, District Junagadh. He has also stated that cross cases were also registered and chargesheet was submitted on 25.11.2003. Thereafter the cases were committed to the Court of Sessions, Junagadh. The Sessions Case was transferred in the Court of learned 2nd Fast Track Court Judge, Junagadh for conducting trial.

3. Before the learned Judge, the charges were framed on 21.12.2004 and the oral evidence was recorded. Thereafter further statements of accused were recorded by the learned 2nd Fast Track Court Judge, Junagadh and the arguments of both sides were heard and the matter was kept for pronouncement of judgment.

3.1 At that time the accused moved an application on 17.5.2007 being Misc.Criminal Application No.170 of 2007 seeking transfer of Sessions Case No.85 of 2003 and 53 of 2004 before the learned Sessions Judge, Junagadh.

4. The learned Sessions Judge, Junagadh by his judgment and order dated 4.6.2007 granted the application of transfer of Sessions Case No.85 of 2003 and Sessions Case No.53 of 2004 to himself. The learned Sessions Judge also stayed the said order till 19.6.2007.

4A. Being aggrieved and dissatisfied with the said order, the petitioner has filed this present Criminal Revision Application before this Court somewhere on 14.6.2007. On 18.6.2007 the matter was kept on 19.6.2007 and ultimately the matter was already heard subsequently on 19.6.2007.

5. On behalf of the petitioner, I have heard learned Senior Counsel Mr.P.M.Thakkar with Mr.D.M.Thakkar. On behalf of respondent No.1-State of Gujarat, I have heard Mr.K.C.Shah, learned APP and on behalf of respondents No.2 and 3, I have heard

Mr.N.D.Nanavati, learned Senior Counsel with Mr.Hriday Buch in this behalf.

6. However, after the matter was heard for some time, it was stated by both the learned Senior Counsels for the petitioner as well as respondents-accused that, if this Court passes the following order, the same will be in the interest of justice and both the learned Senior Counsels have given their consent for the same and they do not invite any reasons in support of the order.

6.1 In view of the same, this Court has not gone into the merits of the matter and only with a view to see that the matter be heard immediately, this order has been passed in this behalf. This Court also does not enter into the merits of allegation made by the accused against the learned Sessions Judge. However, the learned Sessions Judge has already observed that the learned 2nd Fast Track Court Judge, Junagadh, who has conducted the trial in view of the averments and in view of the complaint made by accused, and he has expressed his desire that he do not want to continue with the trial. In view of the same, this Court does

not enter into the merits of the matter of the order passed by the learned Sessions Judge dated 4.6.2007. However the said order of 4.6.2007 is substituted accordingly.

(i) The learned Sessions Judge, Junagadh is requested to transfer the Sessions Case No.85 of 2003 and Sessions Case No.53 of 2004 pending before the learned 2nd Fast Track Court Judge, Junagadh to any other Fast Track Court Judge, Junagadh, who is competent to conduct the sessions cases in this behalf (except the learned 2nd Fast Track Court Judge, Junagadh).

(ii) After the matter is transferred, as in this case, the incident is of 2003 and the charges were framed in 2004 and we are in 2007 and entire oral evidence is also recorded, therefore the learned Sessions Judge, before whom the sessions cases are transferred, is requested to decide the sessions cases preferably within three months from the receipt of the writ of this Court.

7. In view of the consensus arrived at between the parties, this Court do not express any opinion on the merits of the allegation made against the learned 2nd Fast Track Court Judge, Junagadh who conducted the trial.

7A. The aforesaid order has been substituted with the consent of parties and therefore this Court has not expressed any opinion on the merits of the matter on the order passed by the learned Sessions Judge dated 4.6.2007 transferring the matter to himself. As this Court has not entered into the merits of the matter, the affidavit-in-reply filed by otherside is not taken on record and the same has been handed over to the learned advocate for the respondents.

8. With the aforesaid observations and directions, this Criminal Revision Application is accordingly disposed of. Direct service is permitted. The Registry is directed to send the writ forthwith. Rule is discharged to the aforesaid extent.

(K.M. Mehta, J.)

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